IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 3RD AUGUST 2007 / 12TH SRAVANA 1929

WP(C).No. 23766 of 2007(D)

AGAINST THE ORDER DATED 30/03/1998 IN IA 859/2007 IN OS.263/1995 of MUNSIFF COURT,ALUVA

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PETITIONER:

HASSAN, S/O ABDUL AHAMMAD, AGED 44,
PUTHENPURAYIL, THEKKEKUNNATH EDATHALA,
KUZHUVELIPPADY KARA, ALUVA EAST VILLAGE,
ALUVA.

BY ADV. SRI.T.K.VENUGOPALAN

RESPONDENTS:

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1. HALEEMA, W/O MAKKAR PULIMOOTIL,
EDATHALAKARA, ALUVA EAST VILLAGE.

2. KHADEEJA, W/O ABDUL AHAMMED,
PUTHENPURAYIL THEKKEKUNNATH EDATHALA KARA,
ALUVA EAST VILLAGE, ALUVA.

3. SAINABA, D/O ABDUL AHAMMED, DO. DO.

4. ABDUL KAREEM, S/O ABDUL AHAMMED, DO. DO.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J.

WP(C)No. 23766 OF 2007 D

Dated this the 3rd August, 2007.

JUDGMENT

This writ petition is filed seeking to set aside the order passed in I.A.859/07 in O.S.263/95. The defendant is the petitioner herein. He moved that application to consider the question of equity and reservation by filing the interim application. The trial court while passing the preliminary decree had found "the mesne profits and equities and reservation if any may be considered in final decree proceedings." Most probably after the filing of the commissioner's plan and report and after calling for the objections and after permitting the parties to adduce evidence regarding the equity and reservation the court has to pass an order on that. It cannot be considered independently and a decision be passed. Therefore, the order of the court below at this stage need not be interfered with. But needless to say that the court is bound to consider the question of equity and reservation while passing the final decree after affording opportunity to the parties to adduce evidence in support of their respective contentions. Writ petition is disposed of accordingly.

M.N.KRISHNAN
Judge

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